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10 February 1984MEMORANDUM FOR: Deputy Director for Administration
General Counsel
C/SECOM
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FROM:
Chief, Legislation Division
Office of Legislative LiaisonSUBJECT: H.R. 4681 - "Federal Polygraph Limitation
and Anti-Censorship Act of 1984"

1. Attached for your review is a copy of the "Federal Polygraph Limitation and Anti-Censorship Act of 1984," which was introduced on 30 January 1984 by Representative Jack Brooks. Also attached for your review is the statement made by Representative Brooks on the House floor in introducing this proposed legislation. This bill has been referred to the House Committee on Post Office and Civil Service for further action, and a hearing before the Committee's Post Office and Civil Service Subcommittee chaired by Representative Schroeder has been scheduled for 29 February 1984. Fast track consideration of this bill can be expected.

2. You will recall that Representative Brooks attached as an amendment to the 1984 Department of Defense (DOD) Authorization Act, a provision limiting until 15 April 1984 the use of polygraphs at DOD to that use in effect as of August 1982. A similar amendment prohibiting the expanded use of prepublication review secrecy agreements by agencies other than CIA and NSA also was attached by Senator Mathias as an amendment to the 1984 State Department Authorization Act. The attached bill would make permanent these prohibitions on the implementation of the expanded prepublication review and polygraph policies contained in NSDD 84. Section 3 of the bill would prohibit an agency from requiring any employee to submit to a polygraph examination except where an employee agrees to submit voluntarily to such an examination as part of a narrowly-focused investigation into alleged criminal conduct or an unauthorized disclosure of classified information. Section 4 of the bill similarly prohibits an agency from imposing any prepublication review requirement on its employees. Heads of executive agencies also are required under this bill to rescind all prepublication review agreements in

effect on the date of the enactment of this bill. Employees aggrieved by violations of this provision are provided with both injunctive and monetary relief remedies which may be sought in actions instituted in federal district courts.

3. The CIA and NSA are both exempted in section 6 of the bill from all of the above provisions. At present, this exemption is co-extensive with the above prohibitions contained in the bill. These provisions prohibit agencies from imposing prepublication review requirements or polygraph examinations on their "employees." The exemption similarly provides that these provisions will not apply to "employees of the CIA." We can anticipate that it will be brought to Mr. Brooks' attention that the above prohibitions may not reach contractors and other individuals who are not "employees" of executive branch agencies. We must carefully monitor this bill to insure that any change in the scope of these prohibitions to extend beyond Government "employees" is matched by a corresponding change in the exemption provided to the Agency. Otherwise, if the prohibitions are expanded to include Government contractors and the exception provided is limited to Agency employees, the Agency's ability to continue to use prepublication review and polygraphs with respect to contractors and other "non-employees" could be significantly impaired. In addition, consideration should be given as to whether the present exemption would permit the Agency to polygraph military and other detailees who are temporarily assigned to the Agency for duty.

4. Any comments you may have concerning this proposed bill would be most welcome.

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Attachment

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SWH:csh (10 February 1984)